

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Special Access Rates for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking to Reform)	
Regulation of Incumbent Local Exchange Carrier)	RM-10593
Rates for Interstate Special Access Services)	

COMMENTS OF CENTURYTEL, INC.

On behalf of its operating subsidiaries, CenturyTel, Inc. ("CenturyTel") hereby offers its Comments in response to the Commission's Order and Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

Through its operating subsidiaries, CenturyTel provides local exchange, long-distance, dial-up and dedicated broadband Internet access, and other information services predominantly to rural customers in its 22-state incumbent local exchange carrier (ILEC) region. CenturyTel has been at the forefront among ILECs in acquiring rural exchanges from larger carriers and improving them, and implementing network advancements such as DSL deployment. CenturyTel's acquired exchanges include 88 Alabama local exchanges and 96 Missouri local exchanges formerly served by Verizon. These exchanges, now served by CenturyTel of Alabama,

¹ *Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Revenues*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-25, RM-10593, FCC 05-18 (rel. Jan. 31, 2005) ("*Special Access NPRM*").

LLC and CenturyTel of Missouri, LLC, respectively, were subject to price cap regulation at the time of acquisition, and continue to be subject price cap regulation.²

CenturyTel opposes proposals to retreat from a market-oriented regulatory regime for special access services offered by price cap carriers. These Comments will demonstrate that such proposals lack a sound factual foundation. Earnings data that has no probative value should not be the basis of a rule change. Moreover, investment in special access services, demand for access services, and competition to provide access services all are thriving under the current regulatory framework. Therefore, there is no need to apply any of the vestiges of earnings regulation, such as a productivity factor or earnings sharing, to the special access market. Pricing flexibility already is tied to the level of competition in each market. The Commission should maintain its current price cap and pricing flexibility frameworks so as to encourage continued growth and market-based competition in the provision of special access services.

II. THERE IS NO EVIDENCE TO SUPPORT REVISING PRICE CAP REGULATION OR ENDING PRICING FLEXIBILITY

The Commission started this investigation largely at the instigation of AT&T, which filed a Petition for Rulemaking in 2002.³ The Commission sought comment on the AT&T Petition in late 2002,⁴ and the record developed thus far calls into serious question proposals to increase regulation of special access services provided by price cap carriers. Specifically, AT&T

² *ALLTEL Corporation, CenturyTel of Missouri, LLC, et al., Petitions for Waiver of Section 61.41, Memorandum Opinion and Order*, 17 FCC Rcd 27694 (2002).

³ AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593, Petition for Rulemaking (filed Oct. 15, 2002) (“AT&T Petition”).

⁴ *Wireline Competition Bureau Seeks Comment on AT&T’s Petition For Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Public Notice, DA 02-2913 (rel. Oct. 29, 2002).

erroneously used ARMIS Form 43-01 data to allege “patently excessive”⁵ earnings. For several reasons discussed below, this data is not probative as to a price cap company’s real economic earnings. In sum, while AT&T claimed that “[t]he Commission has been duped,”⁶ it is AT&T that has attempted to dupe the Commission.

The validity of a review of special access services based on earnings reported in the ARMIS Form 43-01 is questionable in light of the Commission’s rules assigning the costs and revenues for special access services to different reporting accounts and different jurisdictions, and the separations freeze that has been in place since 2001. The Commission recognized in its *Special Access NPRM* that its “cost allocation rules and factors such as the current separations freeze may undermine the usefulness of examining rates of return derived from ARMIS data.”⁷ As a specific example, due to the separations freeze, the *costs* to provide DSL and transport services are spread across several baskets mostly allocated to the *intrastate* jurisdiction, but Commission rules require that all DSL *revenues* be allocated to the *interstate* jurisdiction.⁸ Because special access costs are vastly understated in the federal ARMIS reports, the paper earnings derived from those reports for special access services will necessarily be far higher than real economic earnings. It follows that the rise in total revenues set forth in the AT&T Petition merely comports with the “greatly

⁵ AT&T Petition at 8.

⁶ *Id.* at 2.

⁷ *Special Access NPRM* at ¶ 61.

⁸ *GTE Telephone Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC Rcd 22455 (1998) (finding that DSL services are interstate and properly allocated to the federal jurisdiction); *see* 47 C.F.R. §§ 32.4999(f), 32.5083; *see, e.g.*, Comments of BellSouth, filed in RM-10593 at 6 (Dec. 2, 2002). As BellSouth explained, “DSL switching, trunking, cable and wire and support investments are not directly assigned to Special Access but instead are separated between interstate (all rate elements) and intrastate. Also, all of BellSouth’s DSL expenses are separated between interstate and intrastate based on existing separations procedures, causing less than 20% of actual DSL expenses to be allocated to Special Access, while 100% of the DSL revenues are assigned to Special Access.” *Id.*

increasing sales” that the AT&T Petition also highlights.⁹ Simply stated, during a time of “greatly increasing sales,” special access earnings would appear to rise even if costs (only partially allocated to the interstate jurisdiction) rose faster than revenues (fully allocated to the interstate jurisdiction). As discussed further below, this increasing demand combined with strong competition in the special access services market also provide evidence that special access services are priced competitively. Indeed, in response to the AT&T Petition, each of the affected Bell Operating Companies (BOCs) presented evidence that their annual per-line special access revenues declined over the same period.¹⁰

Over the last four years, the earnings information referenced in the ARMIS reports has diverged even further from real earnings due to the Commission’s 2001 *Separations Freeze Order*, which froze in place price-cap LECs’ accounting allocations.¹¹ In its *Separations Freeze Order*, the Commission required price-cap carriers to calculate the relationships between categories of their investment and expenses within Part 32 accounts (including the jurisdictional allocation factors) as of a specific point in time, and “freeze” those category relationships and allocation factors for five years, or until the Commission otherwise issued comprehensive changes to the Part 36 rules.¹²

⁹ AT&T Petition at 11.

¹⁰ See *Special Access NPRM* at ¶ 20 (citing Declaration of Alfred E. Kahn and William E. Taylor at 15 (attached to each of the oppositions filed by BellSouth, Qwest, SBC and Verizon) (“the RBOCs’ average revenue per line between 1996 and 2001 decreased by more than 1 percent in nominal terms and by more than 3 percent per year in constant dollars”)).

¹¹ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, 16 FCC Rcd 11382 (2001) (“*Separations Freeze Order*”).

¹² *Id.* ¶ 11.

The Commission foresaw potential cost-revenue distortions, but the stated purpose of the freeze was to “stabilize and simplify to the separations process.”¹³ The Commission acknowledged that the jurisdictional separations used at the time of the freeze were becoming increasingly outmoded due to the “growing presence of high bandwidth technologies.”¹⁴ In part because the freeze would produce distortions in reported earnings, the Joint Board recognized that the requirement to freeze cost allocation categories could be inappropriate for some rate-of-return carriers. As explained in the *Separations Freeze Order*:

The Joint Board concluded that a categories freeze may harm rate-of-return carriers by limiting their ability to account for changes in investment through the separations process. In this regard, the Joint Board was concerned that a mandatory categories freeze for all rate-of-return carriers would provide disincentives for these carriers to deploy new technologies due to insufficient cost recovery.¹⁵

For this reason, the Commission determined to make the separations freeze mandatory for price-cap carriers and optional for rate-of-return carriers.

For price cap carriers, the goals of simplicity and stability outweigh any need to match jurisdictional costs and revenues. Reported earnings data for special access services should not be used for rate regulation purposes. As demonstrated below, the special access market is increasingly competitive and the Commission’s goals of promoting greater efficiency and competition are being realized under the current rules.

¹³ *Id.* ¶¶ 1, 48.

¹⁴ *Id.* ¶¶ 1-2.

¹⁵ *Id.* ¶ 19.

III. THE COMMISSION'S PRICE CAP AND PRICING FLEXIBILITY FRAMEWORKS SERVE THE PUBLIC INTEREST AND SHOULD NOT BE MODIFIED

A. Price Cap Regulation and Pricing Flexibility Are Appropriate Market-Based Frameworks in the Extremely Competitive Special Access Services Market

Price cap regulation allows carriers the opportunity to make market-based decisions in an increasingly competitive environment. As the Commission explained, “[i]n contrast to rate-of-return regulation, which limits the *profits* an incumbent LEC may earn, price cap regulation focuses primarily on the *prices* that an incumbent LEC may charge and the *revenues* it may generate from interstate access services.”¹⁶ Price cap regulation provides incentives for carriers to maximize profits through increased efficiencies, while capping rates at a reasonable level. The Commission’s *Pricing Flexibility Order* relieved price cap carriers from certain pricing constraints “to accelerate the development of competition in all telecommunications markets and to ensure that [FCC] regulations do not unduly interfere with the operation of these markets.”¹⁷ The record does not support calls for the Commission to diverge from the pro-competitive course it has set since it instituted price caps nearly 15 years ago.

As evidence of the success of the price cap regime as it relates to special access services, over the last 10 years, the United States demand for advanced services has skyrocketed. Even the AT&T Petition points out “greatly increasing sales” of special access services leading up to the AT&T Petition.¹⁸ Further, especially in the residential and small business market,

¹⁶ *Special Access NPRM* at ¶ 11 [emphasis in original].

¹⁷ *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, at ¶ 1 (1999) (“*Pricing Flexibility Order*”).

¹⁸ AT&T Petition at 11. *High-Speed Services for Internet Access: Status as of June 30, 2004*, Industry Analysis Division, Wireline Competition Bureau, at Tables 1 and 2 (Dec. 2004) (“*2004 High-Speed Services Report*”) (showing total high-speed line growth from approximately 2.8 million in December 1999 to approximately 32.5 million in June 2004 and advanced services line

competition for special access services is fierce. Far from an ILEC broadband monopoly, the cable companies are the dominant broadband providers, consistently leading all other technologies in high-speed lines (over 200 kbps in at least one direction) and advanced services lines (over 200 kbps in both directions).¹⁹ As of June 2004, approximately 57 percent of high-speed lines were served by coaxial cable compared to only 35 percent served by ADSL technology.²⁰ In advanced services, cable broadband holds an even greater lead, accounting for nearly 75 percent of advanced services lines compared to ADSL's approximately 16 percent of this market.²¹ The remaining lines are served by independent providers of fiber, satellite, wireless, and other wireline technologies.²²

CenturyTel faces additional competition from other special access service providers in the residential, small business and enterprise markets. Competitors in the special access services market include facilities-based competitive local exchange carriers, other ILECs serving in adjacent markets, local electric companies, municipally-organized competitors, and others. The numerous competitors in this market, as well as potential competitors, ensure that all special access services providers, including ILECs, must provide high-quality, competitively priced services in order to successfully compete. Moreover, the rapidly increasing demand for CenturyTel's special access services is strong evidence that its prices are competitive. Demand for CenturyTel of Alabama's and CenturyTel of Missouri's DSL services has risen 10-fold in less than three years, from just over 3,000 lines in January 2003 to over 35,000 today. Further, switched access pricing, at least in the interstate jurisdiction, is on the decline. In light of the sweeping reform proposals suggested by

growth from approximately 2.0 million in December 1999 to approximately 23.5 million in June 2004).

¹⁹ See 2004 *High-Speed Service Report* at Table 1.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* Tables 1 and 2.

various parties in the inter-carrier compensation debate, additional declines have been suggested and may be adopted. Declining switched access rates can be expected to put even further downward pressure on special access prices.

Retail special access competition is thriving under price caps and pricing flexibility. Further, the main competitors are not unbundled network element- (UNE-) based, collocated carriers, but fully facilities-based competitors using various technologies. Therefore, concerns related to the Commission's pricing flexibility triggers is completely unfounded. Under the rules, collocation by competitive telecommunications carriers must be demonstrated before any pricing flexibility is permitted.²³ In the geographic markets where collocation has occurred, demand also is strong, which is why the Commission allowed pricing flexibility in such markets. The Commission has found such markets generally can be expected to attract competitors, and in the absence of any proof of barriers to entry, competition should develop to respond to that demand.²⁴ The Commission has found special access to be among the most open markets.²⁵ Therefore, the Commission should maintain its current price cap and pricing flexibility frameworks.

B. The Commission Should Reject Proposals for a New Price Cap Regime for Special Access

The Commission's price cap and pricing flexibility regulations are working as they were intended. AT&T's assertions regarding ILEC rate increases for special access services simply are not probative as to ILEC market power or a need for reform.

²³ 47 C.F.R. § 69.709.

²⁴ See generally *Pricing Flexibility Order* (setting triggers based on collocation in a certain percentage of wire centers or in wire centers representing the highest demand (measured by revenues)).

²⁵ *Expanded Interconnection with Local Telephone Company Facilities*, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd 3259, at ¶ 2 (1991) (noting early competitive entry in the interstate access services market brought on by the development of fiber optic technology, intensified interstate long-distance competition and the break-up of AT&T).

Pricing flexibility allows carriers to set rates taking into account increased investment, changes in demand, and competition from facilities-based telecommunications providers, including fiber, coaxial cable, wireless and satellite-based providers. Indeed, Phase II pricing flexibility specifically contemplates the ability of price cap ILECs to raise as well as lower rates.²⁶ The Commission already has found the record does not support a finding that special access rates established pursuant to Phase II pricing flexibility are unreasonable under the Communications Act of 1934, as amended.²⁷

In particular, the Commission should not reinstitute the productivity factor (or “X-factor”) or earnings sharing. For both of these proposals, in the *Special Access NPRM*, the Commission seeks comment on the validity of using price cap carrier earnings information as a benchmark for determining the need for increased regulation. As discussed above, the entire purpose of price caps is to end reliance on rate-of-return data for regulatory purposes. Throughout the *Special Access NPRM* the Commission calls into question use of such data, and CenturyTel concurs that regulated earnings reports are of limited utility, for the reasons stated above.

The Commission instituted a productivity factor at a time when it believed the industry generally was more productive than the economy as a whole.²⁸ Since that time, prices have not risen (adjusted for inflation) and much of the productivity gain expected under price caps has been achieved. Moreover, it has proven exceedingly difficult for the Commission to develop an X-

²⁶ *Pricing Flexibility Order* at ¶ 69.

²⁷ *Special Access NPRM* at ¶ 129.

²⁸ *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6795, ¶ 74 (1990) (“the ‘productivity offset’ subtracts the amount by which LECs can be expected to outperform economy-wide productivity gains”).

factor appropriate for all price cap carriers.²⁹ Re-imposing the X-factor makes no sense and will only dampen investment incentives.

CenturyTel also agrees with the Commission that “sharing severely blunts the incentives of price cap regulation by reducing the rewards for LEC efficiency gains.”³⁰ The Commission should affirm its tentative conclusion that it should not reinstitute sharing.³¹

IV. CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission not to modify the regulatory frameworks governing price caps and pricing flexibility.

Respectfully submitted,

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²⁹ See *United States Telecom Ass’n v. FCC*, 188 F.3d 521 (D.C. Cir. 1999) (reversing and remanding the 6.5 percent X-factor adopted in Price Cap Performance Review for Local Exchange Carriers, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642 (1997)); *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001) (remanding second attempt to adopt a 6.5 percent X-factor in *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 9 9-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000)).

³⁰ *Special Access NPRM* at ¶ 43.

³¹ *Id.* ¶ 44.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of CenturyTel, Inc. was served this 13th day of June, 2005, upon the following:

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